

# ARMED FORCES DISCIPLINE AMENDMENT BILL

---

## EXPLANATORY NOTE

THIS Bill amends the Armed Forces Discipline Act 1971, the Royal New Zealand Air Force Act 1950, and the Courts Martial Appeals Act 1953. It is what has become known as an omnibus Bill, relating to various enactments but with a common theme. It is proposed at the appropriate stage to seek the approval of the House to the final enactment of each Part of this Bill as a separate Act.

*Clause 1* relates to the Short Title.

## PART I

### AMENDMENTS OF ARMED FORCES DISCIPLINE ACT 1971

*Clause 2* is a machinery provision, designed to facilitate the final enactment of this Part as a separate Act. It also provides that this Part will come into force on the date appointed for the commencement of the principal Act. (The principal Act is not yet in force: it is expected that it will be brought into force next year.)

*Clause 3* amends the definition of the term "commanding officer" in section 2 of the principal Act by excluding reference to the officer in command of an air force base. Since the enactment of the principal Act, the Air Force has been reorganised, and it is no longer the case that every officer in command of an air force base will be a commanding officer for the purposes of the Act.

*Clause 4* repeals and replaces sections 80 (3) and 102 (6) of the principal Act. These provisions prevent the sentencing of officers and servicewomen to detention. In the case of officers, this is based on principle, and it is not intended to change it. However, the prohibition in respect of servicewomen is based only on the absence of suitable facilities and sufficient trained servicewomen to supervise them; there is no objection in principle to the imposition of a detention sentence on women. Accordingly, both provisions are amended to exclude reference to servicewomen. Until facilities and staff are available, the position can be met by an appropriate Order in Council under section 7 of the principal Act.

*Clause 5* corrects a minor drafting error in section 87 (2) of the principal Act.

*Clause 6* relates to orders for compensation, and to orders made for the restitution of property to the rightful owners following the conviction of a person on charges brought under any of sections 57 to 60 and 74 of the principal Act. (These relate to stealing, receiving, and unlawful possession of service property or property belonging to a fellow serviceman, and offences against the civil law of New Zealand.)

The clause provides that, in general, the order will be suspended in accordance with the rules of procedure until all proceedings have been completed.

The clause similarly provides for the suspension, pending the completion of all proceedings, of section 26 (1) of the Sale of Goods Act 1908. This section provides for the automatic reversion in the owner of stolen goods on the conviction of the offender for theft. (Section 19 of the Courts Martial Appeals Act 1953 presently provides for the suspension of section 26 of the Sale of Goods Act 1908 pending completion of appeal proceedings, but that section will be replaced on the commencement of the principal Act: see section 208 (1) of that Act and the Seventh Schedule to that Act.)

In short, this clause brings the service law back into line with the civil law: see section 138 of the Summary Proceedings Act 1957 and section 387 of the Crimes Act 1961.

*Clause 7* amends section 106 of the principal Act. That section overlooks the fact that orders for compensation can be made under section 87 (3) as well as section 86 of the principal Act. The clause corrects this oversight.

*Clause 8* is akin to *clause 6* of this Bill. In effect, it makes the same provision for the suspension of compensation and restitution orders and the provisions of section 26 (1) of the Sale of Goods Act 1908 in respect of cases dealt with summarily as that clause makes in respect of cases dealt with by court-martial.

*Clause 9* empowers an officer acting summarily, other than one exercising delegated powers under section 115 of the principal Act, to suspend in whole or in part any sentence of detention imposed by him. At present, the power to suspend sentences is given only to courts-martial: see section 138 of the principal Act.

*Clause 10* relates to reviewing authorities acting under section 117 of the principal Act.

*Subclause (1)* is akin to *clause 9* of this Bill. It provides that where a sentence of detention has been imposed by the officer whose finding is being reviewed, the reviewing authority may suspend the sentence in whole or in part.

*Subclause (2)* is akin to *clause 7* of this Bill. Section 117 (10) of the principal Act overlooks the fact that orders for compensation may be made under section 87 (3) as well as section 86 of the principal Act. The subclause corrects this oversight.

*Subclause (3)* is consequential upon *subclause (1)*.

*Clause 11* relates to the attendance of the judge advocate when a court-martial is sitting otherwise than in open court. The present practice is for the judge advocate to be present while the court-martial is taking evidence in camera, but not to attend while the court-martial is deliberating on its finding. However, section 131 of the principal Act provides for the reverse of this practice. The amendments bring the section back into line with the practice.

*Clause 12* amends section 147 of the principal Act relating to the rules of evidence to be followed in proceedings under that Act. In the Navy, special rules of evidence have been evolved in relation to courts-martial at which evidence is to be given on the navigation of one of Her Majesty's New Zealand ships. A competent officer may be appointed to make a written report to the court-martial on the navigation of the ship in question. This clause allows for the admission in evidence of any such report.

*Clause 13* redrafts paragraphs (p) and (q) of section 150 (2) of the principal Act, consequent upon the proposed *section 87A*, set out in *clause 6* of this Bill.

*Clause 14* amends section 160 of the principal Act, relating to the powers of reviewing authorities to make compensation and restitution orders.

*Subclause (1)* is akin to *clause 7* of this Bill. Section 160 (1) of the principal Act overlooks the fact that orders for compensation may be made under section 87 (3) as well as section 86 of the principal Act. The subclause corrects this oversight.

*Subclause (2)* is akin to *clause 6* of this Bill. In effect, it makes the same provision for the suspension of compensation and restitution orders and the provisions of section 26 (1) of the Sale of Goods Act 1908 in respect of cases dealt with by reviewing authorities as that clause makes in respect of cases dealt with by court-martial.

*Clause 15* removes a lacuna in section 169 of the principal Act in relation to the committal of convicted persons to a detention quarter. Subsection (1) provides for an order of a competent service authority to commit an offender who has been sentenced to imprisonment to a service prison, detention quarter, or penal institution. Subsection (2) provides for the committal to a detention quarter of a convicted person who has been sentenced to detention by an officer exercising summary powers. Neither subsection deals with an offender who has been sentenced to detention by a court-martial.

This clause makes provision accordingly.

*Clause 16* amends section 181 of the principal Act, consequent upon *clause 9* of this Bill, which empowers certain officers exercising summary powers to suspend in whole or in part any sentence of detention imposed by them.

*Clause 17* relates principally to a finding of disability under section 188 of the principal Act. Under the present provision, the court-martial is required to direct a finding of disability if it is satisfied on the evidence of at least 1 medical practitioner that the person concerned is under disability. Under the new provision, the first question to be determined is whether or not the person is mentally disordered. If the court-martial is satisfied, on the evidence of at least 1 medical practitioner, that the person is mentally disordered, it shall determine whether he is so mentally disordered as to be unable to plead, or to understand the nature or purpose of the proceedings, or to communicate adequately with a barrister or solicitor for the purposes of conducting a defence. If he is mentally disordered to that extent, the court-martial shall direct a finding of disability to be entered.

*Clause 18* amends section 192 of the principal Act, which relates to the duration of an order, made under section 191 of that Act, for the detention as a special patient under the Mental Health Act 1969 of any person charged with an offence against the Act.

*Subclause (1)* provides, in general, that the order shall cease to have effect if the person concerned is removed from New Zealand pursuant to section 72 of the Mental Health Act 1969, in addition to the other circumstances provided for in the present section 192 (1).

*Subclause (2)* makes it clear that such an order ceases to have effect if the charge against the person concerned is withdrawn. At present, the section is silent on this point.

The changes proposed in *clauses 17 and 18* of this Bill reflect those proposed in respect of the civil law in clauses 19 and 20 of the Criminal Justice Amendment Bill (No. 2), presently before Parliament.

*Clause 19* substitutes a new provision for section 195 of the principal Act. This provides that where an order is made under section 191 or section 194 of that Act for the detention of any person in a psychiatric hospital, notice of the order shall be given to the Maori Trustee in the case of a Maori, or to the Public Trustee in any other case. However, by virtue of the Mental Health Amendment Act 1972, the Maori Trustee no longer has jurisdiction in these cases. Accordingly, the section is rewritten to require notice to be given to the Public Trustee in all cases.

*Clauses 20 and 22* are related, both of them being in response to the decision of the High Court in *McClenaghan v. Bank of New Zealand* [1978] NZLR 528. In that case, the Court held that, in the absence of a statutory or contractual authority, an employer is not entitled to deduct pay and allowances for periods of absence from work. To do so would contravene the Wages Protection Act 1964.

It has long been the policy of the Armed Forces to withhold pay from servicemen who are in desertion or who are otherwise absent without leave. It is therefore necessary to amend the legislation in the light of the Court's decision. Clearly, the problem can arise both before and after a serviceman has been convicted of desertion or unauthorised absence. However, this Bill deals only with cases where a conviction has been entered. The other cases can be dealt with under the Defence Act 1971.

*Clause 20: Subclause (1)* amends section 202 (1) of the principal Act to make it clear that a person subject to the Act who has been convicted of desertion or absence without leave shall forfeit one day's pay for each day's absence.

*Subclause (2)* provides for the recovery of any such forfeited pay out of any pay withheld from that person during his absence under regulations made under the Defence Act 1971, or out of any other money to which he is entitled in respect of his service, except money payable under the Government Superannuation Fund Act 1956.

*Subclause (3)* is an interpretative provision.

*Clause 21* relates to the qualifications necessary for a barrister or solicitor to be appointed Judge Advocate General. The present requirement is 7 years' practice: the new provision stipulates that he must have held a practising certificate for at least 7 years. This is consistent with the qualification required of appointees to the High Court Bench.

*Clause 22* empowers the making of regulations for the forfeiture and recovery of pay in respect of any period during which a convicted person subject to the Act is absent from duty whether before or after conviction (for example, while he is under suspension or is serving a sentence of imprisonment or detention).

*Clause 23* amends the Fourth Schedule to the principal Act, relating to the summary reduction in rank of petty officers. As the provision stands, this punishment could be imposed only where the offence takes place outside New Zealand's territorial limits. This is not quite what is intended. The intention is that the punishment may be imposed only when, at the time the case is being dealt with, the offender is on sea service outside those limits. The clause provides accordingly.

## PART II

### AMENDMENT OF ROYAL NEW ZEALAND AIR FORCE ACT 1950

*Clause 24* is a machinery provision, designed to facilitate the final enactment of this Part as a separate Act. It also provides for the repeal of this Part on the date appointed for the commencement of the Armed Forces Discipline Act 1971. (That Act repeals the Royal New Zealand Air Force Act 1950 and its amendments.)

*Clause 25* validates regulations 13 to 16 of the Royal New Zealand Air Force Regulations 1968, which relate to the stoppage and withholding of an airman's pay in certain circumstances. The empowering section (section 16 as substituted by section 3 of the Royal New Zealand Air Force Amendment Act 1968) provides for regulations to be made for such matters following conviction of certain specified offences. No such offences have been specified in the regulations. For this and other related reasons, it seems probable that the regulations were not authorised in the form in which they were made.

## PART III

### AMENDMENT OF COURTS MARTIAL APPEALS ACT 1953

*Clause 26* is a machinery provision, designed to facilitate the final enactment of this Part as a separate Act.

*Clause 27* amends section 3 (1) of the principal Act, relating to the constitution of the Courts Martial Appeal Court. The principal change relates to the qualifications necessary for a barrister to be appointed to the Court. The present requirement is 7 years' practice; the new provision stipulates that he must have held a practising certificate for at least 7 years. As stated in the note to *clause 21* of this Bill, this is consistent with the qualification required of appointees to the High Court Bench.

*Clause 28* is akin to *clause 7* of this Bill. Section 19 (1) of the principal Act overlooks the fact that orders for compensation can be made under section 87 (3) as well as section 86 of the Armed Forces Discipline Act 1971. The clause corrects this oversight.

*Clause 29* is akin to *clause 6* of this Bill. It relates to orders made by the Court for compensation, and to orders for the restitution of property to the rightful owners following the conviction of a person on charges brought under any of sections 57 to 60 and 74 of the Armed Forces Discipline Act 1971 (as to which, see the note to *clause 6*). The clause provides that, in general, the order will be suspended in accordance with rules of Court until completion of all proceedings.

---

*Hon. T. F. Gill*

## ARMED FORCES DISCIPLINE AMENDMENT

### ANALYSIS

- |  |  |
|--|--|
| <p>Title</p> <p>1. Short Title</p> <p style="text-align: center;"><b>PART I</b></p> <p style="text-align: center;"><b>AMENDMENTS OF ARMED FORCES<br/>DISCIPLINE ACT 1971</b></p> <p>2. Part to be read with Armed Forces<br/>Discipline Act 1971</p> <p>3. Interpretation</p> <p>4. Discretion of court-martial as to<br/>punishment</p> <p>5. Restitution of property</p> <p>6. Suspension of compensation and<br/>restitution orders made by courts-<br/>martial, etc.</p> <p>7. Orders for compensation and restitu-<br/>tion</p> <p>8. Suspension of compensation and<br/>restitution orders made summarily,<br/>etc.</p> <p>9. Punishments of detention may be<br/>suspended</p> <p>10. Summary findings and punishments<br/>to be reviewed by reviewing<br/>authorities</p> <p>11. Courts-martial to sit in open court</p> <p>12. Evidence in proceedings under<br/>principal Act</p> <p>13. Rules of procedure</p> <p>14. Compensation and restitution orders<br/>made by reviewing authorities</p> <p>15. Committal of servicemen serving<br/>imprisonment or detention</p> <p>16. Effect of suspension of sentences</p> | <p>17. Person found under disability</p> <p>18. Duration of order for detention as<br/>special patient where person under<br/>disability</p> <p>19. Notice to be sent to Public Trustee<br/>of certain orders</p> <p>20. Forfeiture and recovery of pay of<br/>deserters and absentees</p> <p>21. Appointment and functions of Judge<br/>Advocate General</p> <p>22. Regulations relating to forfeiture of<br/>pay, etc.</p> <p>23. Summary reduction in rank of petty<br/>officer</p> <p style="text-align: center;"><b>PART II</b></p> <p style="text-align: center;"><b>AMENDMENT OF ROYAL NEW ZEALAND<br/>AIR FORCE ACT 1950</b></p> <p>24. Part to be read with Royal New<br/>Zealand Air Force Act 1950</p> <p>25. Certain regulations validated</p> <p style="text-align: center;"><b>PART III</b></p> <p style="text-align: center;"><b>AMENDMENTS OF COURTS MARTIAL<br/>APPEALS ACT 1953</b></p> <p>26. Part to be read with Courts Martial<br/>Appeals Act 1953</p> <p>27. Constitution of Courts Martial<br/>Appeal Court</p> <p>28. Orders for compensation and resti-<br/>tution</p> <p>29. Suspension of compensation and<br/>restitution orders, etc.</p> |
|--|--|

### A BILL INTITULED

An Act to amend the Armed Forces Discipline Act 1971,  
the Royal New Zealand Air Force Act 1950, and the  
Courts Martial Appeals Act 1953

No. 41—1

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title**—This Act may be cited as the Armed Forces Discipline Amendment Act 1980. 5

## PART I

### AMENDMENTS OF ARMED FORCES DISCIPLINE ACT 1971

**2. Part to be read with Armed Forces Discipline Act 1971**—  
(1) This Part of this Act shall be read together with and deemed part of the Armed Forces Discipline Act 1971\* (in this Part referred to as the principal Act). 10

(2) This Part of this Act shall come into force on the date appointed for the commencement of the principal Act.

**3. Interpretation**—Section 2 (1) of the principal Act is hereby amended by repealing paragraph (i) of the definition of the term “commanding officer”. 15

**4. Discretion of court-martial as to punishment**—  
(1) Section 80 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection: 20

“(3) No officer may be sentenced by a court-martial to detention.”

(2) Section 102 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsection: 25

“(6) No officer dealt with summarily under this Part of this Act may be sentenced to detention.”

**5. Restitution of property**—Section 87 (2) of the principal Act is hereby amended by inserting, after the words “(other than money)”, the word “that”. 30

**6. Suspension of compensation and restitution orders made by courts-martial, etc.**—The principal Act is hereby amended by inserting, after section 87, the following section:

“87A. (1) Where a court-martial makes an order for compensation under section 86 of this Act, or an order for restitution under section 87 of this Act (with or without 35

\*1971, No. 53

Amendment: 1976, No. 13

compensation under subsection (3) of that section), or convicts anyone of an offence to which subsection (1) of section 26 of the Sale of Goods Act 1908 applies, the operation of that order or the provisions of that subsection  
5 shall be suspended to such extent as may be prescribed in the rules of procedure pending—

“(a) The completion of such proceedings; or

“(b) The expiration of such period; or

“(c) The giving of such consent; or

10 “(d) The occurrence of such event or circumstance—  
as may be so prescribed.

“(2) Without limiting section 160 of this Act or section 19 of the Courts Martial Appeals Act 1953, where the operation of any such order or the operation of the said  
15 provisions is so suspended, the order or provisions shall not take effect if the conviction is quashed on review or appeal.”

**7. Orders for compensation and restitution—**Section 106 of the principal Act is hereby amended by omitting the words “or to make restitution in accordance with section 87  
20 of this Act”, and substituting the words “, or to make restitution in accordance with section 87 of this Act (with or without compensation under subsection (3) of that section),”.

**8. Suspension of compensation and restitution orders made summarily, etc.—**The principal Act is hereby amended by  
25 inserting, after section 106, the following section:

“106A. (1) Section 87A (1) of this Act, with any necessary modifications, shall apply to—

30 “(a) Any finding of guilty made by an officer exercising summary powers under this Part of this Act, being a finding to which section 26 (1) of the Sale of Goods Act 1908 applies:

“ (b) Any order for compensation or restitution made by an officer exercising summary powers under  
35 section 86 or section 87 of this Act.

“(2) Without limiting section 117 (9) of this Act, where the operation of any order for compensation or restitution or the operation of the provisions of section 26 (1) of the Sale of Goods Act 1908 is suspended by virtue of subsection  
40 (1) of this section, the order or provisions shall not take effect if the conviction is quashed on review.”



**9. Punishments of detention may be suspended**—The principal Act is hereby amended by inserting, after section 115, the following section:

“115A. Subject to sections 181 to 183 of this Act, if an officer exercising summary powers, other than an officer to whom powers have been delegated under section 115 of this Act, imposes a punishment of detention, he may suspend the operation of the whole or any part of the punishment.” 5

**10. Summary findings and punishments to be reviewed by reviewing authorities**—(1) Section 117 of the principal Act is hereby amended by inserting, after subsection (8), the following subsection: 10

“(8A) Where an officer exercising summary powers, other than an officer to whom powers have been delegated under section 115 of this Act, has imposed a punishment of detention, a reviewing authority may, subject to sections 181 to 183 of this Act, suspend the whole or any part of the punishment.” 15

(2) The said section 117 is hereby further amended by omitting from subsection (10) the words “and to make restitution of property under section 87 of this Act”, and substituting the words “, or to make restitution of property under section 87 of this Act (with or without compensation under subsection (3) of that section), or both to pay compensation and make restitution,”. 20 25

(3) The said section 117 is hereby further amended by inserting in subsection (11), after the words “a punishment is quashed or varied”, the words “or suspended”.

**11. Courts-martial to sit in open court**—(1) Section 131 of the principal Act is hereby amended by inserting in the proviso to subsection (2), after the words “purpose of excluding”, the words “the judge advocate, or”. 30

(2) The said section 131 is hereby further amended by omitting from subsection (6) the words “and the judge advocate”. 35

**12. Evidence in proceedings under principal Act**—Section 147 (2) of the principal Act is hereby amended by adding the following paragraph:

5 “(o) Where the issue or one of the issues in the proceedings relates to the navigation of one of Her Majesty’s New Zealand ships, a navigation report prepared by a competent officer or officers appointed in accordance with the rules of procedure shall be evidence of the matters stated in the report.”

10 **13. Rules of procedure**—Section 150 (2) of the principal Act is hereby amended by repealing paragraphs (p) and (q), and substituting the following paragraphs:

15 “(p) Specifying any matter referred to in section 87A (1) of this Act in relation to the suspension of orders for compensation; and providing for the retention of deductions from pay made pursuant to any order for compensation while the order is suspended:

20 “(q) Specifying any matter referred to in section 87A (1) of this Act in relation to the suspension of orders for restitution and the suspension in certain cases of the provisions of section 26 (1) of the Sale of Goods Act 1908; and providing for the retention and safe custody of any property to which any order for restitution or those provisions apply while the order or the operation of those provisions is suspended.”

30 **14. Compensation and restitution orders made by reviewing authorities**—(1) Section 160 of the principal Act is hereby amended by omitting from subsection (1) the words “make restitution of property under section 87 of this Act”, and substituting the words “to make restitution of property under section 87 of this Act (with or without compensation under subsection (3) of that section), or both to pay compensation and make restitution,”.

35 (2) The said section 160 is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) Section 87A of this Act, with any necessary modifications, shall apply to any order made by a reviewing authority under subsection (1) of this section as if the order had been made by a court-martial.”

**15. Committal of servicemen serving imprisonment or detention**—Section 169 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) An order of a competent service authority shall be sufficient authority for the committal— 5

“(a) Of a service prisoner to a service prison or to a detention quarter or, if the order so specifies, to a penal institution; or

“(b) Of a service detainee to a detention quarter.” 10

**16. Effect of suspension of sentences**—(1) Section 181 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where an officer exercising summary powers other than an officer to whom powers have been delegated under section 115 of this Act, imposes a sentence of detention, or a court-martial imposes a sentence of imprisonment, detention, reduction in rank, forfeiture of seniority, or a fine, and the officer or court suspends the whole or any part of the sentence, the sentence or part of the sentence that is suspended, as the case may be, shall not become operative unless and until the suspension is terminated by an order made under section 182 or section 183 of this Act.” 15 20

(2) The said section 181 is hereby further amended by omitting from subsection (2) the words “under Part VIII of this Act”. 25

(3) The said section 181 is hereby further amended by inserting, in subsection (7), after the words “had been suspended by”, the words “the officer who or”.

**17. Person found under disability**—(1) Section 187 of the principal Act is hereby amended by omitting from subsection (1) the definition of the term “under disability”. 30

(2) The said section 187 is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of this Part of this Act, a person is under disability if, because of the extent to which he is mentally disordered, he is unable— 35

“(a) To plead at a trial by court-martial; or

“(b) To understand the nature or purpose of the court-martial proceedings; or 40

“(c) To communicate adequately with a barrister or solicitor for the purposes of conducting a defence at a trial by court-martial.”

5 (3) Section 188 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) If, at the trial by court-martial of a person charged with an offence against this Act, whether or not he has pleaded to the charge, the court is satisfied, on the evidence  
10 of at least one qualified medical practitioner, that the person is mentally disordered, then, subject to subsection (3) of this section, the court shall, after giving the prosecutor and the person an opportunity to be heard and to call evidence on the matter, determine whether the person is under  
15 disability.

“(1A) If the court is satisfied that the person is under disability, it shall direct a finding to that effect to be recorded.”

20 (4) Section 188 (4) of the principal Act is hereby amended by omitting the expression “subsection (1)”, and substituting the expression “subsection (1A)”.

**18. Duration of order for detention as special patient where person under disability**—(1) Section 192 of the principal Act is hereby amended by omitting from subsection (1)  
25 the expression “section 74”, and substituting the expression “sections 72 and 74”.

(2) The said section 192 is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding anything in subsection (1) of this  
30 section, where, in any case to which that subsection applies, the charge against the person concerned is withdrawn, the order made by the court under section 191 (1) (a) of this Act shall be deemed to be cancelled.”

**19. Notice to be sent to Public Trustee of certain orders**—The principal Act is hereby amended by repealing  
35 section 195, and substituting the following section:

“195. Whenever a court-martial makes an order under section 191 or section 194 of this Act for the detention of any person in a psychiatric hospital as a special patient or, as  
40 the case may be, a committed patient, the court shall cause a copy of the order to be sent to the Public Trustee; and, on receipt by the Public Trustee of the copy of the order,

Part VII of the Mental Health Act 1969 shall apply to the person as if he were a protected patient within the meaning of that Part."

**20. Forfeiture and recovery of pay of deserters and absentees**—(1) Section 202 of the principal Act is hereby amended by omitting from subsection (1) the words "all of the pay and allowances which would have been payable to him if he had not been absent without leave", and substituting the words "one day's pay and allowances for each day during which he was in desertion or absent without leave".

(2) The said section 202 is hereby further amended by inserting, after subsection (2), the following subsection:

"(2A) The pay and allowances that are to be forfeited under subsection (1) of this section may, without limiting any other mode of recovery, be recovered from such person by the Crown—

"(a) By deduction from any pay and allowances that would otherwise have been payable to him in respect of the whole or any part of the period during which he was in desertion or absent without leave, but which have been withheld from him in accordance with regulations made under the Defence Act 1971; and

"(b) To the extent that such pay and allowances (if any) are insufficient to meet the pay and allowances that are to be forfeited, by deduction from any other pay and allowances or other money due, owing, or payable to such person by the Crown in relation to his service in the Armed Forces, not being an amount due, owing, or payable to him or on his death under the Government Superannuation Fund Act 1956."

(3) The said section 202 is hereby further amended by adding the following subsection:

"(5) In calculating the number of days of desertion or absence without leave for the purposes of this section, if such period, being a continuous period of absence, calculated in hours,—

"(a) Is less than 24 hours, it shall be counted as one day; or

"(b) Is more than 24 hours, each multiple of 24 hours shall be counted as one day and any remaining number of hours shall be counted as a further day."

**21. Appointment and functions of Judge Advocate General**—Section 203 (1) of the principal Act is hereby amended by omitting the words “Supreme Court of not less than 7 years’ practice”, and substituting the words “High  
 5 Court who has held a practising certificate as such for not less than 7 years”.

**22. Regulations relating to forfeiture of pay, etc.—**  
 (1) Section 205 (1) of the principal Act is hereby amended  
 10 by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) Providing, in cases where a person subject to this  
 Act is convicted of any offence by a civil court or  
 a court-martial or is found guilty of an offence by  
 15 an officer exercising summary powers, for the forfeiture of the whole or part of one day’s pay and allowances (in the case of a serviceman) or salary, wages, and other emoluments (in the case of any other person subject to this Act who is paid by the Crown in right of New Zealand) for each day  
 20 or part of a day during which he is held in civil or service custody (including imprisonment or detention) or is suspended from duty or is otherwise absent from duty by reason of the offence; and for the continuance or withholding of pay and allow-  
 25 ances or salary, wages, and emoluments pending his conviction or acquittal:

“(aa) Where regulations are made for the purposes of paragraph (a) of this subsection, providing for the  
 30 recovery of any pay and allowances or salary, wages, and emoluments that are to be forfeited under those regulations—

“(i) In the case of any serviceman, by deduction from, or withholding or delaying payment of, any money due, owing, or payable to him by the  
 35 Crown in relation to his service in the Armed Forces; and

“(ii) In the case of any other person subject to this Act who is paid by the Crown in right of New Zealand, by deduction from his salary or wages or  
 40 from any other emoluments payable to him:

“(b) Providing, in cases where a person subject to this Act has been convicted by court-martial or found guilty by an officer exercising summary powers of an offence against this Act, for deductions from, or

withholding or delaying payment of, any money due, owing, or payable to him by the Crown in relation to his service in the Armed Forces for the purpose of paying any fine, or compensation, or other payment for which he may be liable under this Act.” 5

(2) The said section 205 is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) No regulations made under subsection (1) of this section shall make any provision contrary to or inconsistent with section 92 of the Government Superannuation Fund Act 1956.” 10

**23. Summary reduction in rank of petty officer**—The Fourth Schedule to the principal Act is hereby amended by omitting the note to the first item in the second column, and substituting the following note: 15

“*‡This punishment may be imposed only on a petty officer who, at the time of the disposal of the charge, is on sea service and is outside the territorial limits of New Zealand.*”

## PART II

20

### AMENDMENT OF ROYAL NEW ZEALAND AIR FORCE ACT 1950

**24. Part to be read with Royal New Zealand Air Force Act 1950**—(1) This Part of this Act shall be read together with and deemed part of the Royal New Zealand Air Force Act 1950\*. 25

(2) This Part of this Act shall come into force on the date on which this Act receives the Governor-General’s assent.

(3) This Part of this Act shall be deemed to be repealed on the date of the commencement of the Armed Forces Discipline Act 1971. 30

**25. Certain regulations validated**—Regulations 13 to 16 of the Royal New Zealand Air Force Regulations 1968 are hereby declared to be valid; and everything done or omitted to be done by any person in accordance with any of the provisions of the said regulations 13 to 16 shall be deemed for all purposes to have been done lawfully. 35

\*1957 Reprint, Vol. 10, p. 897

Amendments: 1958, No. 22; 1959, No. 42; 1968, No. 87; 1967, No. 28; 1976, No. 10

PART III

AMENDMENTS OF COURTS MARTIAL APPEALS ACT 1953

**26. Part to be read with Courts Martial Appeals Act 1953**—(1) This Part of this Act shall be read together with  
5 and deemed part of the Courts Martial Appeals Act 1953\*  
(in this Part referred to as the principal Act).

(2) This Part of this Act shall come into force on the  
date appointed for the commencement of the Armed Forces  
Discipline Act 1971.

10 **27. Constitution of Courts Martial Appeal Court**—Section  
3 (1) of the principal Act is hereby amended by repealing  
paragraphs (a) and (b), and substituting the following  
paragraphs:

“ (a) The Judges of the High Court; and  
15 “ (b) Such other persons, being barristers of the High  
Court of New Zealand who have held a practising  
certificate as such for not less than 7 years or  
former Judges of the High Court, as the Governor-  
General in Council may appoint.”

20 **28. Orders for compensation and restitution**—(1) Section  
19 of the principal Act (as substituted by section 208 (1)  
of the Armed Forces Discipline Act 1971) is hereby amended  
by omitting from subsection (1) the words “or make restitu-  
tion of property under section 87 of the Armed Forces  
25 Discipline Act 1971”, and substituting the words “, or to  
make restitution of property under section 87 (with or  
without compensation under subsection (3) of that section),  
of the Armed Forces Discipline Act 1971, or both to pay  
compensation and make restitution.”.

30 (2) The said section 19 is hereby further amended by  
repealing subsection (3).

**29. Suspension of compensation and restitution orders,  
etc.**—The principal Act is hereby amended by inserting,  
after section 19, the following section:

35 “19A. (1) Where the Court makes an order for compensa-  
tion under section 86 of the Armed Forces Discipline Act  
1971, or an order for restitution under section 87 of that  
Act (with or without compensation under subsection (3) of  
that section), that order shall be suspended to such extent  
40 as may be prescribed by rules of Court pending—



- “(a) The completion of such proceedings; or  
 “(b) The expiration of such period; or  
 “(c) The giving of such consent; or  
 “(d) The occurrence of such event or circumstance—  
 as may be so prescribed. 5
- “(2) Where the operation of any such order is so suspended, it shall not take effect if the conviction is quashed on appeal.
- “(3) Rules of Court may be made—
- “(a) Specifying any matter referred to in subsection (1) 10  
 of this section in relation to the suspension of orders for compensation; and providing for the retention of deductions from pay made pursuant to any order for compensation while the order is suspended; and 15
- “(b) Specifying any matter referred to in subsection (1)  
 of this section in relation to the suspension of orders for restitution; and providing for the retention and safe custody of any property to which any order for restitution applies while the order is sus- 20  
 pended.”